Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies	)	IB Docket No. 05-221

COMMENTS OF ICO SATELLITE SERVICES G.P.

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Date: July 29, 2005

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COMMENTS

ICO Satellite Services G.P. ("ICO") submits these comments in response to the Public Notice released on June 29, 2005, seeking public comment on various options[1] for redistributing or reallocating one-third of the spectrum allocated to 2 GHz mobile satellite service ("MSS").[2]

[1] Specifically, the *Second Public Notice* seeks comment on the following three options for redistribution or reallocation of the remaining third of the 2 GHz MSS spectrum allocation: (1) redistribute the spectrum equally to ICO and TMI Communications and Company Limited Partnership ("TMI") pursuant to Section 316 of the Communications Act of 1934, as amended ("Communications Act"); (2) redistribute the spectrum to new MSS licensees pursuant to a new processing round; and (3) reallocate and re-assign the spectrum for other services pursuant to additional rulemaking and licensing proceedings. *See* FCC Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-134 (June 29, 2005) ("*Second Public Notice*").

[2] Pursuant to a separate public notice, the Federal Communications Commission ("FCC" or "Commission") also sought comment on its proposal to modify the 2 GHz MSS licenses of ICO and TMI under Section 316 to allow each licensee access to at least 13.33 MHz of spectrum, or a third of the spectrum allocated to 2 GHz mobile satellite service ("MSS"). *See* FCC Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-133 (June 29, 2005) ("*First Public Notice*"). For ease of reference, the terms "licenses" and "licensees," with respect to 2 GHz MSS, will refer to FCC authorizations to provide 2 GHz MSS and the parties that hold those authorizations, regardless of whether the authorization is a U.S. satellite license or a letter of intent authorization granting a reservation of spectrum to a foreign-licensed satellite system

I. INTRODUCTION AND SUMMARY

The Commission's broadband, public safety, homeland security, competition, and spectrum goals will be achieved expeditiously and effectively through the immediate redistribution of the remaining third of the 2 GHz MSS spectrum allocation to the existing 2 GHz MSS licensees. Redistribution of the spectrum to ICO and TMI is the only option that will achieve the Administration's goal of providing broadband access to all Americans by 2007.

Through its multi-billion dollar investments and its recent satellite and technology contracts, ICO is poised to enter the broadband MSS market by 2007. The Commission, however, must provide regulatory certainty and redistribute all of the available 2 GHz MSS spectrum to the remaining 2 GHz MSS licensees in order to ensure that these licensees have adequate spectrum to serve as robust MSS competitors. For too many years, incumbent service providers have used the regulatory process to keep the fate of spectrum in the 2 GHz band unresolved, leaving ICO without the single critical remaining input that would allow it to compete successfully in the wireless marketplace. MSS incumbents seek to perpetuate this state of affairs, even though they enjoy access to more spectrum than ICO. Terrestrial wireless interests that enjoy access to hundreds of MHz of spectrum, 30 MHz of which was reallocated from the 2 GHz MSS band merely two years ago, still seek to grab even more MSS spectrum and prolong the existing regulatory uncertainty.

The other options for redistributing or reallocating the remaining 2 GHz MSS spectrum would not serve the Commission's stated public interest goals. Redistributing the spectrum pursuant to a new processing round would leave existing 2 GHz MSS licensees capacity-constrained, limiting their ability to offer broadband services and precluding effective additional competition for MSS incumbents. Reallocation of the spectrum for other services similarly would weaken the MSS competitive environment, and runs counter to the Commission's existing

policy to retain 40 MHz of spectrum for 2 GHz MSS. Although both MSS and terrestrial wireless incumbents have access to significantly more spectrum than ICO, they cannot, as ICO can, use the remaining 2 GHz MSS spectrum to meet the Commission's public interest goals in a timely and effective manner.[3]

II. REDISTRIBUTION OF THE AVAILABLE 2 GHz MSS SPECTRUM TO THE REMAINING 2 GHz MSS LICENSEES WILL BEST SERVE THE PUBLIC INTEREST

Redistribution of the available 2 GHz MSS spectrum allocation to the remaining 2 GHz MSS licensees will advance the public interest and the Commission's important policy goals by ensuring that the spectrum will be used to provide new and innovative broadband services to the public within the next two years. Specifically, redistribution of the spectrum to ICO and TMI will enable the Commission quickly to achieve its broadband, public safety, homeland security, competition, and spectrum goals, as set forth in its Draft Strategic Plan for the next five years.[4] No other option for redistributing or reallocating the spectrum will ensure the launch of service by 2007 or advance the Commission's policy goals as effectively.

A. Additional Spectrum Will Allow 2 GHz MSS Licensees To Achieve The Administration's Goal Of Ensuring Universal Broadband Access By 2007

As ICO and others repeatedly have noted, additional spectrum will allow 2 GHz MSS licensees to offer broadband and basic telephone services to all areas of the country, particularly

[3] ICO previously submitted *ex parte* filings urging the Commission to divide returned 2 GHz MSS spectrum between the two remaining licensees, ICO and TMI, and ICO requests that these filings be incorporated by reference into this proceeding. *See* Letter from Suzanne Hutchings Malloy, ICO, to Donald Abelson, Chief, Int'l Bur., FCC, Docket Nos. 02-34 & 02-248 (May 3, 2005); Letter from Suzanne Hutchings Malloy, ICO, to Marlene H. Dortch, Secretary, FCC, Docket Nos. 99-81 & 02-34 (June 7, 2005).

[4] *See* FCC Public Notice, *Public Invited to Review Draft Strategic Plan* (July 5, 2005) ("Draft Strategic Plan").

rural and remote areas that are not served adequately or at all by terrestrial systems, wireline or wireless.[5] Millions of Americans today still do not receive basic telephone service, and the vast majority of Americans, or approximately 80 percent of U.S. households, do not receive broadband service.[6] Moreover, FCC data shows that rural areas are significantly less likely to receive broadband service than urban areas.[7] In view of the lack of broadband access, the President of the United States has committed to making broadband service available in "every corner of our country *by the year 2007*."[8] Additionally, the Chairman of the Commission recently stated that "the *most important policy priority* for the commission is setting a regulatory framework that encourages the deployment of broadband. Both on the wireline side *and wireless*."[9] Similarly, the Commission's Draft Strategic Plan provides that "*[a]ll Americans* should have affordable access to robust and reliable broadband products and services."[10]

The inherent capability to provide coverage to the entire United States at all times make MSS systems uniquely suited to extend affordable broadband services to areas of the country that are not readily or economically served by terrestrial wireline or wireless systems.[11] In fact, the Commission has found that satellite systems offer distinct economic and technical advantages

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[5] *See, e.g.*, May 3rd Letter at 2; ICO Comments, ET Docket Nos. 00-258 & 95-18 & IB Docket No. 99-81, at 7-14 (Oct. 22, 2001).

[6] *See* FCC Industry Analysis Division, Wireline Competition Bureau, *Trends in Telephone Service*, Tables 2.7 & 16.3 (Apr. 2005).

[7] *Id.*, Table 2.7.

[8] *See* Patrick Ross, *Bush Touts Efforts to Promote Broadband*, Communications Daily, Apr. 27, 2004, at 1 (emphasis added).

[9] *Questions for Kevin J. Martin*, Wall St. J., July 18, 2005 (emphasis added).

[10] Draft Strategic Plan at 6 (emphasis added).

[11] *See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services*, 9 FCC Rcd 4957, ¶ 94 (1994).

over terrestrial wireless and wireline systems. Specifically, the Commission noted that "satellites may offer cost advantages over wireline access in rural and remote areas, where sparsely populated areas cannot provide the economies of scale to justify the deployment costs of wireline networks."[12] Satellites also can provide service to "geographically isolated areas, such as mountainous regions and deep valleys, where rugged and impassable terrain may make service via terrestrial wireless or wireline telephony economically impractical."[13] Consequently, the Commission has found satellites to be "an excellent technology for delivering basic and advanced telecommunication services to unserved, rural, insular or economically isolated areas, including Native American communities, Alaska, Hawaii, and Puerto Rico, and U.S. territories and possessions such as communities within the U.S. Virgin Islands, Guam and American Samoa."[14] Next-generation 2 GHz MSS systems, in particular, are even better suited to extend affordable broadband services to all areas of the country because they are designed to incorporate the latest satellite technology.

By redistributing the last third of the 2 GHz MSS spectrum allocation equally to ICO and TMI, the Commission will ensure that the federal goal of universal broadband access can be achieved by 2007. ICO fully expects, and in fact is required by the Commission's milestone requirements, to launch its 2 GHz MSS system by July 17, 2007. ICO diligently and promptly has pursued implementation of its system, and has not required any milestone extension or waiver. In fact, ICO met the first four milestones required for its nongeostationary satellite orbit

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[12] *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 11794, ¶ 13 (2000) (citation omitted).

[13] *Id.*

[14] *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, ¶ 32 (2000) ("*2 GHz MSS Rules Order*") (citation omitted).

("NGSO") 2 GHz MSS system, and is the only 2 GHz MSS licensee that has met the satellite launch milestone.[15] Additionally, ICO completed the contract execution and critical design review milestones for its geostationary satellite orbit ("GSO") 2 GHz MSS system.[16] ICO also filed certifications of completion of the first two milestones required under its revised 2 GHz MSS milestone schedule, as well as documentation demonstrating commencement of physical construction of its GSO system.[17] The primary hurdles that ICO faces do not result from a lack of willingness or commitment to the timely deployment of its 2 GHz MSS system, but rather from the persistent regulatory uncertainty regarding the proper amount of spectrum that would support the commercial viability of the system over the long term.

A total spectrum reservation of 2 x 10 MHz would provide ICO with the bandwidth needed to offer broadband service following the launch of its system in July 2007. Reallocation of the spectrum for other services or redistribution of the spectrum to new 2 GHz MSS licensees would require additional, lengthy rulemaking and licensing proceedings that easily would extend well beyond 2007. Even after completion of those proceedings, service may not commence for a number of years because of the time required to construct the licensed facilities. In fact, new 2

[15] *See ICO Satellite Services, G.P.*, D.A. 05-1504, ¶¶ 4, 8 and 10 (May 24, 2005).

[16] *Id.* ¶¶ 22-23.

[17] *See* Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel, ICO to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOI-19970926-00163 (July 19, 2005); Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel, ICO to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOI-19970926-00163 (July 25, 2005); Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel, ICO to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOI-19970926-00163 (July 28, 2005).

GHz MSS licensees would not be required to commence service until five or six years after receiving their licenses.[18]

B. Additional Spectrum Will Allow 2 GHz MSS Licensees To Serve Homeland Security And Public Safety Needs

Under the Commission's Draft Strategic Plan, "[c]ommunications during emergencies and crises must be available for public safety, health, defense, and emergency personnel, as well as all consumers in need."[19] As Inmarsat acknowledges, MSS "remains essential to support the needs of public safety and homeland security."[20] The Commission specifically cited satellites' unique role in the provision of these services in its proceedings allocating spectrum and establishing service rules for 2 GHz MSS.[21] Terrestrial wireline and wireless systems are susceptible to numerous forces, such as loss of power and physical damage resulting from environmental or man-made cataclysms, that do not endanger MSS systems. Time and again, MSS has proven to be the only effective means of communications at times and in locations where terrestrial wireline and wireless systems have failed. For example, MSS telephones were deployed by rescue workers at the sites of both the World Trade Center and Pentagon attacks when transmission towers that powered cellular phones were destroyed or remaining capacity

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[18] *See* 47 C.F.R. § 25.164 (establishing milestone schedules for geostationary and nongeostationary orbit satellite systems).

[19] Draft Strategic Plan at 16.

[20] Inmarsat Comments at 8, IB Docket No. 05-220 (July 13, 2005).

[21] *Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-Band*, Notice of Proposed Rulemaking, 11 FCC Rcd 11675, ¶12 (1996) (noting that satellites "provide emergency communications to any areas in time of emergencies and natural disasters."); *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, 10 FCC Rcd 3230, ¶ 7 (1995)(noting that satellites "provide nationwide public safety coverage….[and] could satisfy important requirements that cannot be economically satisfied by other means").

was overburdened.[22] More recently, MSS systems were relied upon during the Asian tsunami relief efforts, particularly when the wireless networks were unavailable.[23]

In view of the unique capabilities offered by MSS, it is crucial that the Commission provide sufficient spectrum to allow 2 GHz MSS licensees to provide competitive broadband services that also could serve homeland security and public safety needs. Granting additional spectrum to 2 GHz MSS licensees will foster robust MSS competition, thus resulting in a broader array of services and rates to satisfy homeland security and public safety needs.

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[22] *See, e.g., Rescue Workers Get New Phones*, St. Petersburg Times, Sept. 18, 2001, at 9A (reporting that rescuers and city crews were having difficulty with the recovery effort because cell phones often did not work in lower Manhattan, prompting President Bush to provide 200 special satellite phones for rescue workers at the World Trade Center); Sarah Bisker, *Ohio University Satellite Relieves Telephone Line Congestion*, University Wire, Sept. 12, 2001 (reporting that the New York State Emergency Management Agency requested use of a NASA satellite to provide alternative communications routes); Dick Kelsey, *Satellite Phone Interest Renewed After Attack Rescue Use*, Newsbytes, Sept. 25, 2001; *Satellite Phones Show Value As Supplemental Service*, Satellite Today, Sept. 14, 2001.

[23] *See, e.g.*, Northern Sky Research, *Mobile Services Being Deployed Quickly to Aid Victims of Tsunami* (Jan. 2005) ("As efforts towards alleviating the plight of the Asian Tsunami victims continue, the importance of robust and reliable broadband communication links via satellite remains vital. Next-generation mobile satellite services are proving to be an integral component of relief efforts, which provides a crucial link between victims, their families and those who are tasked to rescue and rebuild what has been damaged or destroyed."); International Committee of the Red Cross, *Indonesia: The Humanitarian Response Since the Tsunami* (Apr. 13, 2005) ("Since early January, family links have been restored in nearly 2,500 cases, the majority of which took place using satellite phones made available to survivors particularly on the west coast."), *available at* http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/indonesia-update-130405; Edward Harris, *Cutting-Edge Telecom to Help Post-Tsunami* (Jan. 13, 2005) *available at* http://wtopnews.com/index.php?nid=108&sid=388800 ("In northern Sumatra's Aceh Province, closest to the epicenter of the earthquake and hardest hit by the tsunami, the disaster ruined many mobile-phone signal-repeater posts, leaving residents and aid workers alike cursing poor coverage and dropped signals. Many foreign aid workers leapfrog the shaky mobile system via satellites.").

C. Additional Spectrum Will Foster Robust Competition And Spectrum Efficiency By Supporting The Long-Term Operations Of 2 GHz MSS Systems

The Draft Strategic Plan directs the Commission to "foster sustainable competition across the entire communications sector" and to "facilitate efficient and effective use of non-federal spectrum domestically and internationally to promote the growth and rapid deployment of innovative and efficient communications technologies and services."[24] Consistent with these competition and spectrum goals, granting ICO access to a total of 20 MHz of spectrum would support the long-term operations of its 2 GHz MSS system, thus facilitating "sustainable" MSS competition as well as efficient and effective use of the spectrum.

As ICO repeatedly has noted, access to sufficient spectrum is critical to the long-term commercial viability of 2 GHz MSS systems.[25] Accordingly, ICO has long sought access to a minimum of 15 x 2 MHz of spectrum for its system, well before the Commission adopted rules for ancillary terrestrial component ("ATC") service.[26] Other 2 GHz MSS licensees also requested access to comparable amounts of spectrum,[27] and warned that assigning a lesser

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[24] Draft Strategic Plan at 9, 11.

[25] *See* May 3rd Letter at 2; Letter from ICO to Marlene Dortch, Secretary, FCC (Dec. 20, 2002); Letter from ICO to Marlene Dortch, Secretary, FCC (May 6, 2003); Letter from Mobile Communications Holdings, Inc., Constellation Communications Holdings, Inc., ICO to Marlene Dortch, Secretary, FCC (Dec. 12, 2002); ICO Comments, ET Docket Nos. 00-258 & 95-18 & IB Docket No. 99-81, at 15 (Oct. 22, 2001).

[26] *See, e.g.*, ICO Comments, ET Docket Nos. 00-258 & 95-18 & IB Docket No. 99-81, at 15 (Oct. 22, 2001); SEC Form F-1 Registration of ICO Global Communications (Holdings) Limited, at 24 (June 12, 1998).

[27] For example, Boeing previously requested use of a total of 17.1 MHz of 2 GHz MSS spectrum (consisting of 8.25 MHz for uplink and 8.85 MHz for downlink). Additionally, Celsat sought a total of 25 x 2 MHz of spectrum for its system. *See* Application of The Boeing Company, File No. STAT-LOA-19970926-00149, at 4, Attachment One at 5 (Sept. 26, 1997); Amendment to Application of Celsat America, Inc., File No. SAT-AMD-19970925-00124, at 3 (Sept. 3, 1997).

amount would be "too small to permit economically viable MSS operations."[28] More recently, TMI provided a detailed technical showing demonstrating the need for 20 MHz of spectrum.[29]

The amount of MSS spectrum reserved for ICO and other 2 GHz MSS licensees is considerably less than that assigned to other MSS licensees. For example, Globalstar has access to 27.85 MHz of L-band and S-band spectrum. Additionally, MSV is assigned up to 20 MHz of internationally coordinated L-band spectrum.[30] Based on publicly available information, it is reasonable to infer that Inmarsat has access to at least as much internationally coordinated L-band spectrum as MSV.

Inmarsat's and Globalstar's own efforts to acquire additional 2 GHz spectrum, even though they already have access to significantly more spectrum than ICO and TMI, confirm that a substantial amount of spectrum is required to support the long-term operations of 2 GHz MSS systems. As even Inmarsat acknowledges, "[i]t is a truism that more spectrum is better, because more spectrum supports greater overall system capacity and throughput, and a greater number of subscribers."[31]

Thus, over the years, ICO and other MSS licensees have provided ample evidence demonstrating the need for at least 20 MHz of spectrum to support the long-term operations of an MSS system. The Commission should not insist upon a more detailed technical showing, particularly from licensees that have not yet commenced operations. Imposing this requirement

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[28] Supplemental Comments of the ICO USA Service Group, IB Docket No. 99-81, at 4 n.7 (Feb. 17, 2000).

[29] Letter from Gregory C. Staples et al., Counsel, TMI, to Donald Abelson, Int'l Bur., FCC (Apr. 19, 2005).

[30] *See Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band*, Report and Order, 17 FCC Rcd 2704, ¶ 45 (2002).

[31] Inmarsat Comments at 21, IB Docket No. 05-220 (July 13, 2005).

would be inconsistent with the Commission's rules and policies generally requiring automatic redistribution of returned satellite spectrum to the remaining licensees in the frequency band without any demonstration of spectrum need.[32]

Although the Commission has adopted a presumption that "three satellite licensees in a frequency band are sufficient to make reasonably efficient use of the frequency band,"[33] ICO has a pending petition for reconsideration challenging this presumption.[34] As ICO noted, the Commission has never defined a satellite market based on a single frequency band. Historically, the Commission's analysis of relevant markets for satellite services has been much broader. For example, the Commission previously has found that the relevant product market for satellite communications services includes domestic and international telecommunications markets.[35] It also specifically considered the services offered by MSS competitors in North America that operate in different frequency bands (including Globalstar, Inmarsat, Iridium, and Orbcomm) in determining the relevant product and geographic markets for MSS providers.[36] As Intel correctly notes, "if [the Commission] maintains just two MSS licensees in the 2 GHz band … those licensees would not enjoy market power in the provision of either mobile voice services or broadband services."[37] Thus, reserving 20 MHz of spectrum for ICO's use would not confer any

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[32] *See Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶¶ 61-63 (2003).

[33] 47 C.F.R. 25.157(g)(3).

[34] *See* ICO Petition for Reconsideration, *Amendment of Commission's Space Station Licensing Rules and Policies*, Docket Nos. 02-34 & 02-248 (Sept. 26, 2003).

[35] *Id.* at 6.

[36] *Id.*

[37] Intel Reply Comments at 11, IB Docket No. 05-220 (July 25, 2005).

market power upon ICO or prevent efficient use of the spectrum, but rather would place ICO on a more equal footing with MSS incumbents offering broadband, voice, and data services.

In view of the significant public interest benefits of granting 2 GHz MSS licensees access to 20 MHz of spectrum, the Commission immediately should redistribute the available 2 GHz MSS spectrum equally to the remaining licensees. Contrary to Globalstar's contention,[38] an immediate redistribution of the available 2 GHz MSS spectrum would not prejudice, but rather would be subject to the outcome of Globalstar's pending petition for reconsideration of its 2 GHz MSS license cancellation. After the Commission initially canceled TMI's 2 GHz MSS authorization, it redistributed the abandoned spectrum among the remaining 2 GHz MSS licensees.[39] This spectrum redistribution did not prevent the Commission from later reinstating the TMI license and returning 2 GHz MSS spectrum to TMI, thus effectively modifying the licenses of other 2 GHz MSS licensees to reduce the amount of their assigned spectrum.[40] Similarly, an immediate redistribution of the available 2 GHz MSS spectrum would not preclude the Commission from returning 2 GHz MSS spectrum to Globalstar if Globalstar's license is reinstated on appeal.

III. REDISTRIBUTION OF THE AVAILABLE 2 GHz MSS SPECTRUM PURSUANT TO A NEW PROCESSING ROUND MERELY WOULD EXPAND INMARSAT'S SUBSTANTIAL SPECTRUM HOLDINGS

Other than Inmarsat, no party has expressed any intent to obtain the available 2 GHz MSS spectrum pursuant to a new processing round.[41] Thus, redistributing the available 2 GHz

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[38] *See* Globalstar Comments at 3-6, IB Docket No. 05-220 (July 13, 2005).

[39] *See, e.g., ICO Satellite Services G.P.*, 18 FCC Rcd 12339, ¶ 3 (Int'l Bur. 2003).

[40] *See TMI Communications and Co., Ltd. P'ship*, 19 FCC Rcd 12603, ¶ 1 (2004).

[41] Sirius requests that the Commission "obtain and review the public interest benefits of the proposals [the Commission] requested," but does not offer any specific proposal for use of the
Footnote continues…

MSS spectrum pursuant to a new processing round likely would not foster additional competition and could achieve nothing more than granting spectrum to an MSS incumbent already endowed with substantial amounts of spectrum. Specifically, Inmarsat is authorized by the U.K. to use up to 66 MHz of L-band spectrum, subject to coordination with other L-band MSS operators pursuant to the Mexico City Agreement.[42] Based on publicly available information, it appears that Inmarsat has coordinated for its own use an amount of spectrum comparable to the 20 MHz of L-band spectrum assigned to MSV. This amount is substantially more than the 8 MHz of spectrum currently reserved for ICO and TMI individually or the 13.33 MHz of spectrum that the Commission proposes to make available to each of those companies. Moreover, because the amount of spectrum assigned to Inmarsat under the Mexico City Agreement is based upon actual usage and projections of future need, it is possible that Inmarsat could obtain access to even more spectrum in the near future.

In any event, Inmarsat had full opportunity to acquire 2 GHz MSS spectrum and in fact submitted an application for a 2 GHz MSS license, but subsequently withdrew its application.[43] Inmarsat fails to demonstrate that its need for additional spectrum is more compelling now than it was four years ago, when it could have pursued its application and obtained a 2 GHz MSS license.

Moreover, creating a new 2 GHz MSS processing round will not facilitate rapid and efficient use of the spectrum. As discussed in Section II(A) above, issuing a license pursuant to

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available spectrum or suggest that it would seek to obtain the spectrum to provide MSS if a new processing round were established. *See* Sirius Comments at 4, IB Docket No. 05-220 (July 13, 2005).

[42] *See Comsat Corp.,* 16 FCC Rcd 21661, ¶¶ 5-7 (2001).

[43] *See 2 GHz MSS Rules Order*, ¶ 17 n.80.

a new processing round and commencing service under that license likely would require at least five or six years, if not more.

IV. REALLOCATION OF THE AVAILABLE 2 GHz MSS SPECTRUM WOULD BE CONTRARY TO THE COMMISSION'S 2 GHz MSS ALLOCATION POLICIES

The Commission should resist calls for any further reallocation of 2 GHz MSS spectrum merely two years after the Commission reallocated 30 MHz of 2 GHz MSS spectrum for other services.[44] In fact, less than a year ago, the Commission rejected CTIA's request to reallocate additional 2 GHz MSS spectrum and declared that MSS licensees "should be given an opportunity to begin operations with the forty megahertz that remained after the 2 GHz MSS reallocation."[45] No changes in the last year have occurred that would warrant a sudden departure from the Commission's established 2 GHz MSS allocation policies. Reallocation of the spectrum would not expedite service to the public and certainly would not ensure broadband access to all Americans by 2007.

V. CONCLUSION

Based upon the foregoing, ICO urges the Commission immediately to modify ICO's and TMI's 2 GHz MSS spectrum reservations to allow each party to access 20 MHz of spectrum, subject to the outcome of the pending appeals of the 2 GHz MSS license cancellations. This

[44] *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz*, Third Report and Order, 18 FCC Rcd 2223, ¶ 28 (2003).

[45] *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz*, Sixth Report and Order, 19 FCC Rcd 20720, ¶ 96 (2004).

spectrum redistribution will help ensure that the Administration meets its goal to have broadband services available to all Americans by 2007 and that homeland security and pubic safety services also will be available nationwide.

Respectfully submitted,

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July 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2005, a copy of the foregoing **COMMENTS** was served by electronic mail upon the following:

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